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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,055	09/18/2006	Alexander Belyakov	P17721	3593

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KONRAD RAYNES & VICTOR, LLP.
ATTN: INT77
315 SOUTH BEVERLY DRIVE, SUITE 210
BEVERLY HILLS, CA 90212

EXAMINER

CONTINO, PAUL F

ART UNIT	PAPER NUMBER
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2114

NOTIFICATION DATE	DELIVERY MODE
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07/09/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

krvuspto@ipmatters.com

Office Action Summary	Application No. 10/599,055	Applicant(s) BELYAKOV ET AL.	
	Examiner PAUL F. CONTINO	Art Unit 2114	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-10,17,19-26,33 and 35-42 is/are pending in the application.
- 4a) Of the above claim(s) 11-16,27-32 and 43-48 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3-6,17,19-22,33 and 35-38 is/are allowed.
- 6) ☒ Claim(s) 7-10,23-26 and 39-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10 April 2009</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION: Final Rejection

Response to Arguments

1. Applicant's arguments with respect to claims 7-10, 23-26, and 39-42 have been considered but are moot in view of the new grounds of rejection.
2. Applicant's arguments with respect to claims 1, 3-6, 17, 19-22, 33, and 35-38 have been fully considered and are persuasive.
3. Applicant's arguments with respect to the abstract and the title have been fully considered and are persuasive.
4. The IDS filed April 10, 2009, has been considered in full.
5. As a note, the Examiner would like to point out to the Applicant that the Applicant's Admitted Prior Art in the last four lines of the Background in the Specification discloses that it has been known to a person skilled in the art at the time the invention was made to have included failover handling by the miniport driver itself. This combined with many of the cited and applied references would overcome various claims presently pending.

6. In addition, the Examiner reads the claim language “with the filter/miniport driver”, in light of the Applicant's Specification and remarks in response to the Office Action filed December 12, 2008, as equivalent to “by the filter/miniport driver”. The filter/miniport drivers are what are carrying out the various actions, not just present when the various actions themselves are being carried out.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 7-10, 23-26, and 39-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Infante (U.S. PGPub 2004/0078632) in view of Golasky (U.S. PGPub 2005/0188239), further in view of Shah (U.S. Patent No. 6,470,397).

As in claims 7 and 39, Infante teaches a method and an article of manufacture for failover when at least one of a network adapter and a data path through the network adapter fails, wherein the network adapter is connected to a miniport driver that is connected to a filter driver (*Fig. 3; paragraphs [0028] and [0035]*), comprising:

determining, with the miniport driver, that the network adapter has failed (*paragraphs [0028], [0035], and [0044]*); and

notifying, with the miniport driver, the filter driver that the network adapter has failed (*paragraphs [0028], [0035], and [0044]*).

However, Infante fails to explicitly teach of determination of a failure with the miniport driver or a callback. Golasky teaches of determining with a miniport driver of a failure (*Fig. 1 #30,40,42; paragraph [0023] where a failover support driver and a miniport driver are combined for fault tolerance*). Shah teaches of using a callback interface for fault notification (*column 7 lines 43-50 and column 9 lines 7-16, notification callback by miniport*).

It would have been obvious to a person skilled in the art at the time the invention was made to have included the driver modification as taught by Golasky in the invention of Infante. This would have been obvious because consolidating resources allows for a more efficient means of operating a computer system.

It would have been obvious to a person skilled in the art at the time the invention was made to have included the callback as taught by Shah in the combined invention of Golasky and Infante. This would have been obvious because the invention of Shah reduces the amount of physical resources necessary to transmit information (*column 3 lines 17-47*).

As in claims 8 and 40, Infante teaches specifying, with the miniport driver, a new data path to be used by the filter driver for rerouting packets (*paragraph [0035]*).

As in claims 9 and 41, Infante teaches completing, with the miniport driver, processing of pending packets directed to the first network adapter with a success status (*paragraphs [0035], [0069], [0074], and [0088]*).

As in claims 10 and 42, Infante teaches determining, with the miniport driver, that the network adapter is restored; and

notifying, with the miniport driver, the filter driver that the network adapter is restored (*paragraphs [0035], [0044], [0046], and [0088]*).

As in claim 23, Infante teaches a system coupled to a network and data storage (*Fig. 1*), comprising:

a host computer (*Fig. 1 #102*);

a storage controller managing Input/Output (I/O) access to the data storage, wherein the storage controller is coupled to the host computer (*Figs. 1-3*);

a filter driver at the host computer (*Fig. 1 #103*);

at least two network adapters at the host computer (*Fig. 1 #s 104/106/108*); and

a miniport driver at the host computer, wherein the miniport driver is capable of determining that at least one of the network adapters has failed and notifying the filter driver that the network adapter has failed (*Fig. 3 #s 308/310; paragraphs [0028], [0035], and [0044]*).

However, Infante fails to explicitly teach of determination of a failure with the miniport driver or a callback. Golasky teaches of determining with a miniport driver of a failure (*Fig. 1 #30,40,42; paragraph [0023] where a failover support driver and a miniport driver are combined for fault tolerance*). Shah teaches of using a callback interface for fault notification (*column 7 lines 43-50 and column 9 lines 7-16, notification callback by miniport*).

It would have been obvious to a person skilled in the art at the time the invention was made to have included the driver modification as taught by Golaksy in the invention of Infante. This would have been obvious because consolidating resources allows for a more efficient means of operating a computer system.

It would have been obvious to a person skilled in the art at the time the invention was made to have included the callback as taught by Shah in the combined invention of Golasky and Infante. This would have been obvious because the invention of Shah reduces the amount of physical resources necessary to transmit information (*column 3 lines 17-47*).

As in claim 24, Infante teaches specifying a new data path to be used by the filter driver for rerouting packets (*paragraph [0035]*).

As in claim 25, Infante teaches completing processing of pending packets directed to the first network adapter with a success status (*paragraphs [0035], [0069], [0074], and [0088]*).

As in claim 26, Infante teaches determining that the network adapter is restored; and notifying, with the miniport driver, the filter driver that the network adapter is restored (*paragraphs [0035], [0044], [0046], and [0088]*).

Allowable Subject Matter

8. Claims 1, 3-6, 17, 19-22, 33, and 35-38 are allowed.

9. The following is a statement of reasons for the indication of allowable subject matter:

As in claims 1, 17, and 33, the inclusion of the limitations involving changing with a filter driver a success status of a packet to a busy status which causes each packet to be reissued, when read within the remainder of the respective limitations of the claims, makes claims 1, 17, and 33, including their respective dependent claims, allowable over the prior art.

Conclusion

10. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art Unit: 2114

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL F. CONTINO whose telephone number is (571)272-3657.

The examiner can normally be reached on Monday-Friday 9:00 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Baderman can be reached on (571) 272-3644. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Paul F. Contino/
6 July 2009
Patent Examiner
Art Unit 2114